## LAI AH HENG & ANOR. v. CHINA UNDERWRITERS LTD.

[O. C. J. (Gordon-Smith Ag. C.J.) July 27, 1948]

[Singapore — Suit No. 191 of 1946]

*Contract — Life insurance — Failure of consideration — Lapse — Effect of occupation.*

In this case the plaintiffs claimed a declaration that a Life Assurance Policy issued by the defendant company had not lapsed. The facts were that one Cheng Pack Seng (who died on 28th March, 1947) having deposited the first annual premium on 8th September, 1941 entered into a contract of insurance with the defendants whose head office was in Hongkong. On the 1st of September, 1942, when the second premium fell due, the Japanese were in occupation of Malaya and Hongkong and the premium was not paid. It was claimed that because the defendants had suspended business on the fall of Singapore and had not appointed agents to collect the premium on 1st September, 1942 and in succeeding years, therefore the deceased was unable to pay the same and thereby the subsequent attitude of the defendants in treating the contract as having lapsed on 1st September, 1942, was a breach of the non-forfeiture condition in the policy and therefore a breach of contract by the defendants.

**Held:** the contract of insurance was not dissolved by the outbreak of war and it was subsisting and continued to exist after the surrender of Singapore and until the 31st of August, 1942, after which the consideration having failed, the contract lapsed and was at an end.

*Cases referred to:—*

(1) *Seligman v. Eagle Insurance Co.* (1917) 1 Ch. 519.

(2) *Blackburn Bobbin Co. v. Allen* (1918) 2 K.B. 467.

(3) *Krell v. Henry* (1903) 2 K.B. 740.

CIVIL SUIT.

*Chong Thutt Pitt* for the plaintiffs.

*C. H. Withers-Payne* for the defendant.

**Gordon-Smith Ag. C.J.** : — The writ of summons in this matter dated 2nd December, 1946, claimed a declaration that the Life Assurance Policy No. 28790 dated 17th September, 1941 for $15,000 issued by the defendant company had not lapsed

The relevant facts are not in dispute, and are briefly as follows:—

The original plaintiff, Cheng Pack Seng, who died in Hong Kong on 28th March, 1947 (hereinafter referred to as the deceased), having deposited the first annual premium of $850.50 on 8th September, 1941, entered into a contract of insurance with the defendants, the terms of which were set out in the formal Policy of Insurance, No. 28790, put in as Exhibit A :—

(1) It is in the usual form with conditions and privileges set out therein and purports to be an endowment Policy for twenty years from 1st September, 1941, the capital sum being payable at the head office of the defendants in Hongkong to the deceased himself if he survived until 1st September, 1961, or, if he died previously to that date, then to his widow.

(2) The more relevant of the privileges and conditions endorsed on the Policy are as follows:

"PAID UP ASSURANCE AND SURRENDER VALUE.

6th. — After the payment of premiums for three or more full years, provided that there is no debt on the Policy under Privilege and Condition 7 hereof or otherwise, the Company, on receipt of written application therefor within three months of the date on which the last unpaid premium became due, will issue a Paid-up Policy for as many twentieths of the sum Assured as there shall have been annual premiums paid, or will pay a Surrender Value. The amount of such Surrender Value will be fixed by the Company and its amount can be ascertained without charge at the office of the Company.

AUTOMATIC NON FORFEITURE.

7th. — The non payment of a premium within the days of grace hereinbefore allowed shall not render this Policy void, provided its Surrender Value is not less than the amount of all premiums in arrear with compound interest thereon at the rate of eight per centum per annum computed annually together with the amount of all other charges (if any) which the Company may have upon this Policy. The Policy shall accordingly continue in force as long as aforesaid subject to the Company having a charge upon this Policy for all such premiums interest and charges and the right to deduct the same from any money payable under this Policy. If, however, the Surrender Value subject to deduction as aforesaid being insufficient to pay the premiums interest and charges then the Policy shall become void, but may be revived at any time within twelve calendar months from the date when it so becomes void upon payment of the premiums interest and charges in arrear, and upon proof being given to the satisfaction of the company of the unimpaired health of the Assured."

(3) At the date 1st September, 1942, when the second premium fell due, the Japanese were in occupation of Malaya and of Hongkong and apparently all operations by the Company in Malaya ceased during that period and there was no branch office in existence, nor personnel in Malaya.

(4) In June, 1946, the defendants were prepared to "revive" the Policy on the basis of Condition 7 subject to the health of the deceased being unimpaired and he was medically examined in Singapore with such object in view. However, the medical examination was unfavourable to the extent that the medical examiner did not recommend such revival at the ordinary rate of premium (on account of weight, pulse and blood pressure) but did recommend the same at an increased premium. The deceased was informed by the defendants by letter dated 17th July, 1946 that they were not prepared to revive the Policy. Further correspondence ensued and the writ of summons was issued as stated. The deceased died in Hong Kong on 28th March, 1947.

In effect the statement of claim claimed, and it was argued similarly by counsel for the plaintiffs, that because the defendants had suspended business on the fall of Malaya, (15th February, 1942) and had not appointed agents to collect the premium due on 1st September, 1942, and in succeeding years, therefore,

the deceased was unable to pay the same and thereby the subsequent attitude of the defendants in treating the contract as having lapsed on 1st September, 1942, was a breach of the non-Forfeiture condition in the Policy and therefore a breach of contract by the defendants. Although frustration of contract by reason of the war was briefly mentioned in argument, such was not pleaded and the case was not argued on this basis, nor is my decision based on frustration but purely on contract and the terms of the same as set out in Policy.

It was also suggested that either or both of the parties had (or would have) become enemy aliens after the surrender, but there was no evidence whatsoever to support this suggestion and I reject the same in toto.

There was no evidence to suggest the deceased himself attempted to pay the premium on 1st September, 1942 or the arrears of premium, after the re-occupation, or to revive or renew the policy and such suggestion appears to have come from the defendants (see letter of the 16th November, 1946) consequent on which he was medically examined by the defendants' doctor on 14th June, 1946 and such revival or renewal was rejected by the defendants.

Coming to the terms and conditions of the contract they are clear and unambiguous and one might describe them as pro forma conditions of any whole life or endowment policy. The obligation to pay the amount assured is dependent on the payment of the annual premia. The only and only premium paid was that paid on 8th September, 1941 which covered the risk undertaken until the following 31st August. Had the deceased died during this period there would have been no question of the liability of the defendants to pay the sum assured (whether payment of such sum could or could not have been effectually made then or later is beside the point). The renewal premium was not paid on 1st September, 1942 nor within the thirty days grace permitted by Condition 3. I might also observe that there was no obligation, nor liability, on the part of the deceased to pay such premium either then or at any future time, nor was there any evidence that he desired to pay the same or made any effort to do so. At that time the Policy had not acquired any surrender value and would not have done so until three or more full years' premia had been paid (see Condition 6). The automatic non-forfeiture clause (Condition 7) did not therefore apply as there was no surrender value.

I have no doubt but that hundreds of policies are forfeited or voluntarily abandoned by the insured every year by reason of non payment of the renewal premium. On the other hand, where there is a surrender value the inclusion of a non-forfeiture clause is not only an equitable provision but is an added attraction to the conditions of the policy and which is, no doubt, an excellent advertisement for the Insurance Company concerned. Insurance Companies vie with each other in making the terms and conditions of their policies as variable and as attractive as possible but the whole basis of a contract of insurance is the quid pro quo, or in other words, the payment of a premium (in advance) for the risk incurred.

In the present case the risk was undertaken as from 1st September 1941 for the ensuing twelve months in consideration of the payment of $850.50 and although the defendants had contracted to accept such risk for the ensuing nineteen years at the same rate of premium and at the option of the deceased, the continued acceptance of such risk was, anyhow for the next two years or until the policy had acquired a surrender value, entirely dependent on the exercise of such option by the deceased by the payment of the annual renewal premium. Such premium was not paid on the due date and there was no obligation or legal duty on the defendants to collect or even to try and collect it. The consideration, as specifically stated in the contract, for the acceptance of the risk was the payment of the first premium and the punctual payment of the annual renewal premia to cover the subsequent annual periods.

The contract, in my opinion, was not abrogated or frustrated by the war or by the Japanese occupation and had the deceased died during the twelve months ending 31st August, 1942, the risk undertaken for this period would have matured and the obligation to pay the sum assured would have arisen.

Various cases were cited but these mainly concerned trading with the enemy or with alien enemy and are not really applicable to the present case, although some comments by Neville J. in *Seligman v. Eagle Insurance Co.*[1] were of interest.

For the plaintiffs the case of *Blackburn Bobbin Co. v. Allen*[2] was quoted which, in effect, merely held that in the absence of any question of trading with the enemy and in the absence of any administrative intervention by the British Government, a bare and unqualified contract for the sale of unascertained goods

would not (unless special facts compelled an opposite view) be dissolved by the operation of the principle in *Krell v. Henry*[3] even though there had been so grave and unforeseen a change of circumstances as to render it impossible for the vendor to fulfil the bargain. Mr. Justice McCardie went to say "If I were to hold otherwise I should create a rule the results of which no man can foresee, and to the operation of which no Judge can satisfactorily fix the limits." The effect of the decision in *Krell v. Henry*[3] was that a collateral though important, circumstance was the basis of the contract between the parties and that when the basis ceased it followed that the contract was dissolved.

I do not see that these cases are applicable or help the plaintiffs' case, although I agree entirely that this contract of insurance was not dissolved by the outbreak of war on 8th December, 1941 and it was subsisting and continued to exist after the surrender on 15th February, 1942 and until 31st August, 1942 after which, the consideration having failed, the contract lapsed and was at an end.

The claim for a declaration, therefore, fails and there will be judgment for the defendants, with costs.

*Judgment for the defendants.*

Solicitors: *Chong Thutt Pitt & Co.; Drew & Napier.*

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## LEE v. REX.

**[A. Cr. J. (Gordon-Smith Ag. C.J.) August 17, 1948]**

**[Singapore — Magistrate's Appeal No. 102 of 1948]**

*Sentence — Factors to be taken into consideration in fixing sentence — Bond for good behaviour.*

In fixing sentence, the nature of the offence, the circumstances and the degree of deliberation must be taken into account. In this case, as there was no deliberation and as the accused had a good record of antecedents, age and character, a bond would have been absolutely justified.

MAGISTRATE'S APPEAL.

Appellant in person.

*A. V. Winslow* (D. P. P.) for the Crown.

**Gordon-Smith Ag. C.J.** (delivering oral judgment): — I have gone very carefully through this record and was amazed to see that the Chartered Bank should pay one of their clerks $60 a month. Of course, there is a cost of living allowance of $40 but the cost of living within the last few years has gone up three times, and in some instances five times.

In his grounds of judgment the District Judge says:—

"A bond for a first offence of this nature would support a bond for all future offences of this nature that would tend to weaken, for every commercial house employing clerks, the slight safeguard which the law gives. I had to fix a sentence which would be deterrent, but I do not think I fixed a sentence which was excessive."

If commercial houses pay their clerks, particularly those with opportunity of handling money and of altering accounts — if they paid such men a miserable wage like this, then all I can say is that they are putting temptation in the way of their employees. I remember a similar case of a young lad in the Standard Bank of South Africa who was paid £12 a month and the board and accommodation available in the only hotel in the place was £12 a month. Later there was a strike and all employees except the managers and accountants went on strike. That strike resulted in their pay and conditions being materially improved and everybody was in absolute sympathy with them.

I think for an offence of this nature under the circumstances of this case a bond would have been absolutely justified, for in fixing sentence, the nature of the offence, the circumstances and the degree of deliberation must be taken into account. There was no deliberation here. It was a sudden temptation and a sudden weakness. This man has a perfectly good record of antecedents, age and character; otherwise he would not have been taken by the bank, I am quite certain.

I propose to alter the sentence to a bond of $500 in two sureties to be of good behaviour for twelve months.

The appeal is allowed.

*Appeal allowed.*